

STATE OF MICHIGAN
COURT OF APPEALS

JOCELYN BROWN and DONALD BROWN,

Plaintiffs-Appellees,

FOR PUBLICATION
April 4, 2006
9:05 a.m.

V

AMY S. HAYES, INGHAM REGIONAL MEDICAL
CENTER, WORK IMPROVEMENT
REHABILITATION CENTER, and LEANN G.
WHITGEN,

No. 256966
Ingham Circuit Court
LC No. 01-093606-NH

Defendants-Appellants.

Official Reported Version

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree that defendants' counsel reasonably believed that the physical therapist expert complied with the requirements of MCL 600.2169 and that reversal is warranted on that basis.

I do not agree that the expert, in fact, met the requirements of § 2169(b) or that *McElhaney v Harper-Hutzel Hosp*, 269 Mich App 488; ___NW2d ___ (2006), was wrongly decided in this regard.

The physical therapist expert was not in the "active clinical practice of the same health profession in which the [defendant occupational therapist] is licensed" MCL 600.2169(b)(l). Although there is apparently considerable overlap in the activities of a physical therapist and an occupational therapist, they are not in the practice of the same health care profession because each is in the practice of the health profession in which he or she is licensed or registered. MCL 333.16105 contemplates that the "vocation, calling, occupation, or employment performed" is one that is subject to licensure or registration. Work hardening therapy is not such an activity. Further, § 2169(b) (i) and (iii) contemplate that the witness practice in the same health profession "in which [the defendant] is licensed" Here, defendant is licensed as an occupational therapist, not a work hardening therapist. While members of different health professions no doubt often have the knowledge and expertise to render opinions regarding the standard of care applicable to colleagues in different health professions with whom they work, § 2169(b) renders such testimony inadmissible. *McElhaney* was correctly decided in this regard.

/s/ Helene N. White